

A bill for an act

relating to taxation; providing an equity and opportunity in education tax credit;
amending Minnesota Statutes 2008, section 290.01, subdivisions 19a, 19c;
proposing coding for new law in Minnesota Statutes, chapter 290.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 290.01, subdivision 19a, is amended to
read:

Subd. 19a. **Additions to federal taxable income.** For individuals, estates, and
trusts, there shall be added to federal taxable income:

(1)(i) interest income on obligations of any state other than Minnesota or a political
or governmental subdivision, municipality, or governmental agency or instrumentality
of any state other than Minnesota exempt from federal income taxes under the Internal
Revenue Code or any other federal statute; and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue
Code, except the portion of the exempt-interest dividends derived from interest income
on obligations of the state of Minnesota or its political or governmental subdivisions,
municipalities, governmental agencies or instrumentalities, but only if the portion of the
exempt-interest dividends from such Minnesota sources paid to all shareholders represents
95 percent or more of the exempt-interest dividends that are paid by the regulated
investment company as defined in section 851(a) of the Internal Revenue Code, or the
fund of the regulated investment company as defined in section 851(g) of the Internal
Revenue Code, making the payment; and

(iii) for the purposes of items (i) and (ii), interest on obligations of an Indian tribal government described in section 7871(c) of the Internal Revenue Code shall be treated as interest income on obligations of the state in which the tribe is located;

(2) the amount of income or sales and use taxes paid or accrued within the taxable year under this chapter and the amount of taxes based on net income paid or sales and use taxes paid to any other state or to any province or territory of Canada, to the extent allowed as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not be more than the amount by which the itemized deductions as allowed under section 63(d) of the Internal Revenue Code exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code. For the purpose of this paragraph, the disallowance of itemized deductions under section 68 of the Internal Revenue Code of 1986, income or sales and use tax is the last itemized deduction disallowed;

(3) the capital gain amount of a lump-sum distribution to which the special tax under section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law 99-514, applies;

(4) the amount of income taxes paid or accrued within the taxable year under this chapter and taxes based on net income paid to any other state or any province or territory of Canada, to the extent allowed as a deduction in determining federal adjusted gross income. For the purpose of this paragraph, income taxes do not include the taxes imposed by sections 290.0922, subdivision 1, paragraph (b), 290.9727, 290.9728, and 290.9729;

(5) the amount of expense, interest, or taxes disallowed pursuant to section 290.10 other than expenses or interest used in computing net interest income for the subtraction allowed under subdivision 19b, clause (1);

(6) the amount of a partner's pro rata share of net income which does not flow through to the partner because the partnership elected to pay the tax on the income under section 6242(a)(2) of the Internal Revenue Code;

(7) 80 percent of the depreciation deduction allowed under section 168(k) of the Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that in the taxable year generates a deduction for depreciation under section 168(k) and the activity generates a loss for the taxable year that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is limited to excess of the depreciation claimed by the activity under section 168(k) over the amount of the loss from the activity that is not allowed in the taxable year. In succeeding taxable years when the losses not allowed in the taxable year are allowed, the depreciation under section 168(k) is allowed;

(8) 80 percent of the amount by which the deduction allowed by section 179 of the Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal Revenue Code of 1986, as amended through December 31, 2003;

(9) to the extent deducted in computing federal taxable income, the amount of the deduction allowable under section 199 of the Internal Revenue Code;

(10) the exclusion allowed under section 139A of the Internal Revenue Code for federal subsidies for prescription drug plans;

(11) the amount of expenses disallowed under section 290.10, subdivision 2;

(12) for taxable years beginning after December 31, 2006, and before January 1, 2008, the amount deducted for qualified tuition and related expenses under section 222 of the Internal Revenue Code, to the extent deducted from gross income; ~~and~~

(13) for taxable years beginning after December 31, 2006, and before January 1, 2008, the amount deducted for certain expenses of elementary and secondary school teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted from gross income; and

(14) the amount of the deduction under section 170 of the Internal Revenue Code that represents contributions to a qualified foundation under section 290.0678.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 2. Minnesota Statutes 2008, section 290.01, subdivision 19c, is amended to read:

Subd. 19c. **Corporations; additions to federal taxable income.** For corporations, there shall be added to federal taxable income:

(1) the amount of any deduction taken for federal income tax purposes for income, excise, or franchise taxes based on net income or related minimum taxes, including but not limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States;

(2) interest not subject to federal tax upon obligations of: the United States, its possessions, its agencies, or its instrumentalities; the state of Minnesota or any other state, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities; the District of Columbia; or Indian tribal governments;

(3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal Revenue Code;

(4) the amount of any net operating loss deduction taken for federal income tax purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss deduction under section 810 of the Internal Revenue Code;

(5) the amount of any special deductions taken for federal income tax purposes under sections 241 to 247 and 965 of the Internal Revenue Code;

(6) losses from the business of mining, as defined in section 290.05, subdivision 1, clause (a), that are not subject to Minnesota income tax;

(7) the amount of any capital losses deducted for federal income tax purposes under sections 1211 and 1212 of the Internal Revenue Code;

(8) the exempt foreign trade income of a foreign sales corporation under sections 921(a) and 291 of the Internal Revenue Code;

(9) the amount of percentage depletion deducted under sections 611 through 614 and 291 of the Internal Revenue Code;

(10) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, the amount of the amortization deduction allowed in computing federal taxable income for those facilities;

(11) the amount of any deemed dividend from a foreign operating corporation determined pursuant to section 290.17, subdivision 4, paragraph (g). The deemed dividend shall be reduced by the amount of the addition to income required by clauses (20), (21), (22), and (23);

(12) the amount of a partner's pro rata share of net income which does not flow through to the partner because the partnership elected to pay the tax on the income under section 6242(a)(2) of the Internal Revenue Code;

(13) the amount of net income excluded under section 114 of the Internal Revenue Code;

(14) any increase in subpart F income, as defined in section 952(a) of the Internal Revenue Code, for the taxable year when subpart F income is calculated without regard to the provisions of section 103 of Public Law 109-222;

(15) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A) and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that in the taxable year generates a deduction for depreciation under section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the

depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the amount of the loss from the activity that is not allowed in the taxable year. In succeeding taxable years when the losses not allowed in the taxable year are allowed, the depreciation under section 168(k)(1)(A) and (k)(4)(A) is allowed;

(16) 80 percent of the amount by which the deduction allowed by section 179 of the Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal Revenue Code of 1986, as amended through December 31, 2003;

(17) to the extent deducted in computing federal taxable income, the amount of the deduction allowable under section 199 of the Internal Revenue Code;

(18) the exclusion allowed under section 139A of the Internal Revenue Code for federal subsidies for prescription drug plans;

(19) the amount of expenses disallowed under section 290.10, subdivision 2;

(20) an amount equal to the interest and intangible expenses, losses, and costs paid, accrued, or incurred by any member of the taxpayer's unitary group to or for the benefit of a corporation that is a member of the taxpayer's unitary business group that qualifies as a foreign operating corporation. For purposes of this clause, intangible expenses and costs include:

(i) expenses, losses, and costs for, or related to, the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property;

(ii) losses incurred, directly or indirectly, from factoring transactions or discounting transactions;

(iii) royalty, patent, technical, and copyright fees;

(iv) licensing fees; and

(v) other similar expenses and costs.

For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

This clause does not apply to any item of interest or intangible expenses or costs paid, accrued, or incurred, directly or indirectly, to a foreign operating corporation with respect to such item of income to the extent that the income to the foreign operating corporation is income from sources without the United States as defined in subtitle A, chapter 1, subchapter N, part 1, of the Internal Revenue Code;

(21) except as already included in the taxpayer's taxable income pursuant to clause (20), any interest income and income generated from intangible property received or

accrued by a foreign operating corporation that is a member of the taxpayer's unitary group. For purposes of this clause, income generated from intangible property includes:

- (i) income related to the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property;
- (ii) income from factoring transactions or discounting transactions;
- (iii) royalty, patent, technical, and copyright fees;
- (iv) licensing fees; and
- (v) other similar income.

For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

This clause does not apply to any item of interest or intangible income received or accrued by a foreign operating corporation with respect to such item of income to the extent that the income is income from sources without the United States as defined in subtitle A, chapter 1, subchapter N, part 1, of the Internal Revenue Code;

(22) the dividends attributable to the income of a foreign operating corporation that is a member of the taxpayer's unitary group in an amount that is equal to the dividends paid deduction of a real estate investment trust under section 561(a) of the Internal Revenue Code for amounts paid or accrued by the real estate investment trust to the foreign operating corporation;

(23) the income of a foreign operating corporation that is a member of the taxpayer's unitary group in an amount that is equal to gains derived from the sale of real or personal property located in the United States; ~~and~~

(24) for taxable years beginning after December 31, 2006, and before January 1, 2008, the additional amount allowed as a deduction for donation of computer technology and equipment under section 170(e)(6) of the Internal Revenue Code, to the extent deducted from taxable income; and

(25) the amount of the deduction under section 170 of the Internal Revenue Code that represents contributions to a qualified foundation under section 290.0678.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 3. [290.0678] EQUITY AND OPPORTUNITY IN EDUCATION TAX CREDIT.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Eligible student" means a student who:

(1) is a member of a household whose total annual income during the year, without consideration of the benefits under this program, does not exceed an amount equal to the income standard used to qualify for a reduced price meal under the National School Lunch Program, as specified in United States Code, title 42, section 1758. Once a student is eligible under this program, the student remains eligible regardless of household income until the student graduates from high school or reaches 21 years of age, whichever occurs first;

(2) was eligible to attend a public school in the preceding semester or is starting school in Minnesota for the first time; and

(3) resides in Minnesota.

(c) "Equity and opportunity in education donation" means a donation to a qualified foundation that makes qualified grants.

(d) "Qualified school" means a school operated in Minnesota that is:

(1) either a public or charter elementary or secondary school or a nonpublic elementary or secondary school in Minnesota wherein a resident may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of chapter 363A and the Civil Rights Act of 1964; and

(2) has at least 40 percent of its enrollment on October 1 of each year comprised of eligible students.

(e) "Qualified foundation" means a nonprofit organization granted an exemption from the federal income tax described in section 501(c)(3) of the Internal Revenue Code which complies with the requirements of the equity and opportunity in education tax credit. A qualified school that meets the requirements of this paragraph is a qualified foundation program in this section.

(f) "Qualified grant" means a grant from a qualified foundation to:

(1) a qualified school;

(2) the parents or guardians of an eligible student in support of that student's academic, arts, or athletic activities; or

(3) a program in support of a qualified school's mission of educating eligible students in academics, arts, or athletics, including transportation.

(g) "Seven-county metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.

(h) "Nonmetropolitan counties" means all Minnesota counties not included in the seven-county metropolitan area.

Subd. 2. Credit allowed. (a) An individual or corporate taxpayer is allowed a credit against the tax due under this chapter equal to either 75 percent or 90 percent of the amount donated to a qualified foundation during the taxable year. The credit equals 75 percent of the amount donated unless the taxpayer provides the commissioner with a written commitment to a qualified foundation that specifies the same amount of contribution to be made per year for the current taxable year and the following taxable year, in which case the credit equals 90 percent of the amount donated in each year for each of the two taxable years.

(b) The maximum annual credit allowed is:

(i) \$20,000 for married joint filers for a one-year donation of \$26,666, or for a two-year donation and commitment of \$22,222 per year;

(ii) \$10,000 for other individual filers for a one-year donation of \$13,333, or for a two-year donation and commitment of \$11,111 per year; and

(iii) \$100,000 for corporate filers for a one-year donation of \$133,333, or for a two-year donation and commitment of \$111,111 per year.

(c) A taxpayer must provide a copy of the receipt provided by the qualified foundation when claiming the credit for the donation.

Subd. 3. Application for credit certificate. A taxpayer must apply to the commissioner for an equity and opportunity in education tax credit certificate. Tax credit certificates under this section must be made available on a first-come, first-served basis until the maximum statewide credit amount has been reached. The maximum statewide credit amounts are:

(1) \$7,000,000 per taxable year for donations and commitments in the seven-county metropolitan area; and

(2) \$3,000,000 per taxable year for donations and commitments in nonmetropolitan counties.

The commissioner must not issue a tax credit certificate for an amount greater than the limits under subdivision 2.

Subd. 4. Responsibilities of qualified foundations. (a) Each qualified foundation that receives donations directly from taxpayers under this section must:

(1) notify the commissioner of its intent to participate in this program;

(2) demonstrate to the commissioner that it has been granted an exemption from the federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code;

9.1 (3) provide a receipt or verification on a form approved by the commissioner to
9.2 taxpayers for donations and commitments made to qualified foundations;

9.3 (4) conduct criminal background checks on all of its employees and board members
9.4 and exclude from employment or governance any individuals that might reasonably pose a
9.5 risk to the appropriate use of contributed funds;

9.6 (5) demonstrate its financial accountability by:

9.7 (i) submitting a financial information report for the organization that complies with
9.8 uniform financial accounting standards established by the commissioner and conducted by
9.9 a certified public accountant; and

9.10 (ii) having the auditor certify that the report is free of material misstatements;

9.11 (6) demonstrate its financial viability, if they are to receive donations of \$150,000 or
9.12 more during the school year, by filing financial information with the commissioner prior
9.13 to September 1 of each year that demonstrates the financial viability of the qualified
9.14 foundation;

9.15 (7) use amounts received as donations to make qualified grants within two years
9.16 of the date of receiving the donation; and

9.17 (8) ensure that qualified schools that receive qualified grants or enroll eligible
9.18 students:

9.19 (i) comply with all health and safety laws or codes that apply to nonpublic schools;

9.20 (ii) hold a valid occupancy permit if required by its municipality;

9.21 (iii) certify that it will not discriminate in admissions on the basis of race, color,
9.22 national origin, religion, or disability; and

9.23 (iv) provide academic accountability to parents of students in the program by
9.24 regularly reporting to the parent on the student's progress.

9.25 (b) A qualified foundation that receives donations directly from taxpayers under this
9.26 program must report to the commissioner by June 1 of each year the following information
9.27 prepared by a certified public accountant regarding its grants in the previous calendar year:

9.28 (1) the total number and total dollar amount of donations from taxpayers received
9.29 during the previous calendar year; and

9.30 (2) the total number and total dollar amount of qualified grants awarded during the
9.31 previous calendar year.

9.32 (c) If the commissioner decides to bar a qualified foundation from the program for
9.33 failure to comply with the requirements in paragraph (a), clauses (1) to (8), the qualified
9.34 foundation must notify taxpayers who have donated to the qualified foundation in writing
9.35 within 30 days.

10.1 Subd. 5. **Responsibilities of commissioner.** (a) The commissioner must prescribe a
10.2 standardized format for a receipt to be issued by a qualified foundation to a taxpayer to
10.3 indicate the value of a donation received.

10.4 (b) The commissioner must prescribe a standardized format for qualified foundations
10.5 to report the information required under subdivision 4.

10.6 (c) The commissioner must post on the department's Web site the names and
10.7 addresses of qualified foundations and regularly update the names and addresses of any
10.8 qualified foundations that have been barred from participating in the program.

10.9 (d) The commissioner may conduct either a financial review or audit of a qualified
10.10 foundation upon finding evidence of fraud or intentional misreporting.

10.11 (e) The commissioner may bar a qualified foundation from participating in the
10.12 program if the commissioner establishes that the qualified foundation has intentionally and
10.13 substantially failed to comply with the requirements in subdivision 4. If the commissioner
10.14 determines that a qualified foundation should be barred from the program, the
10.15 commissioner must notify the qualified foundation within 60 days of that determination.

10.16 Subd. 6. **Evaluation of equity and opportunity in education tax credit program.**

10.17 (a) The legislature may authorize the legislative auditor to perform or to contract with one
10.18 or more qualified researchers who have previous experience evaluating school choice
10.19 programs to conduct a study of the program.

10.20 (b) The study must assess the following criteria:

10.21 (1) the level of parental satisfaction with the program;

10.22 (2) the level of participating students' satisfaction with the program;

10.23 (3) the impact of the program and the resulting change in use of nonpublic schools
10.24 on the resident school districts, public school students, and quality of life in a community;

10.25 (4) the impact of the program on public and nonpublic school capacity, availability,
10.26 and quality; and

10.27 (5) participating students' academic performance and graduation rates.

10.28 (c) The researchers who conduct the study must:

10.29 (1) apply appropriate analytical and behavioral science methodologies to ensure
10.30 public confidence in the study;

10.31 (2) protect the identity of participating schools and students by, among other things,
10.32 keeping anonymous all disaggregated data other than that for the categories of grade
10.33 level, gender, and race and ethnicity; and

10.34 (3) provide the legislature with a final copy of the evaluation of the program.

11.1 (d) The relevant public and participating nonpublic schools must cooperate with the
11.2 research effort by providing student assessment results and any other data necessary to
11.3 complete the study.

11.4 (e) The legislative auditor may accept donations to assist in funding the study.

11.5 (f) The study may cover a period of up to 13 years. The legislature may require
11.6 periodic reports from the researchers. After publishing their results, the researchers shall
11.7 make their data and methodology available for public review while complying with the
11.8 requirements of United States Code, title 20, section 1232g.

11.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
11.10 December 31, 2008, and before January 1, 2014.